

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT MILLER, Personal Representative of the
Estate of VAN LEE HOCH,

UNPUBLISHED
March 1, 2007

Plaintiff-Appellant,

v

DOUGLAS MCARTHUR KING, JR., and
FOURTEENTH AVENUE CARTAGE
COMPANY, INC.,

No. 272115
Wayne Circuit Court
LC No. 05-518076-CZ

Defendants-Appellees.

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition in this wrongful death negligence action. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This case arises out of an accident in which plaintiff's decedent, Van Lee Hoch, died as a result of injuries suffered when he was run over by a tractor-trailer or "truck" owned by defendant Fourteenth Avenue Cartage Company, Inc., and driven by defendant Douglas King.

Plaintiff argues that the trial court erred in granting summary disposition in favor of defendants because there was evidence from which a jury could reasonably infer that King's negligence was a proximate cause of Hoch's death. Plaintiff argues that there was substantial evidence that King acted negligently, particularly by failing to look at the rear of the truck before driving. We disagree.

A grant of summary disposition under MCR 2.116(C)(10) is reviewed de novo. *Greene v A.P. Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). The documentary evidence submitted by the parties is viewed in the light most favorable to the party opposing the motion. *Id.* Summary disposition under MCR 2.116(C)(10) is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

The elements of a prima facie case of negligence are that: (1) the defendant owed a duty to the plaintiff, (2) the defendant breached the duty, (3) the breach of duty proximately caused

the plaintiff's damages, and (4) the plaintiff actually suffered damages. *Brown v Brown*, 270 Mich App 689, 693; 716 NW2d 626 (2006).

Critical to this case is the extent of King's duty under negligence law in operating the truck. The general reasonable or ordinary standard of care applicable to negligence cases is "the care that a reasonably careful person would use under the circumstances." *Case v Consumers Power Co*, 463 Mich 1, 6-7; 615 NW2d 17 (2000). This standard does not require a person to exercise "extraordinary care." *Campbell v Kovich*, ___ Mich App ___; ___ NW2d ___ (Docket No. 269876, pub'd December 14, 2006 at 9:00 a.m.), slip op at 3. While it is ordinarily for a jury to determine whether a defendant's conduct fell below the general standard of care, a court may decide the issue where all reasonable persons would agree. *Case, supra* at 7.

In our view, there is no basis to conclude that King breached his duty of ordinary care in operating the truck by failing to look at the rear of the truck before operating it at the time of the incident as claimed by plaintiff. It is undisputed that King was driving the truck forward from the office. Thus, he would have had no reason to be concerned about backing up over another person. There is no evidence that King saw Hoch before King entered the truck. It is unclear exactly how this accident happened. One can surmise that Hoch had begun some type of inspection of the container on the truck while it was parked there, and unfortunately was positioned in some location on or near the truck where he was susceptible to being run over. However, from the undisputed evidence, it is manifest that the truck was not parked in an area where one would reasonably expect or anticipate such inspections being conducted. There was simply no reason for King to have reasonably foreseen that another person would have been in an unusual location where that person could have been run over by the truck at the time of the incident. In this regard, to expect King to have checked the rear of the truck under these circumstances before driving forward to the area where containers were routinely removed and inspected would clearly be to inappropriately hold him to a standard of extraordinary care rather than only reasonable or ordinary care. Thus, plaintiff has not established that the trial court erred in granting summary disposition to defendants.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

/s/ Kurtis T. Wilder